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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,939	03/01/2002	Jean-Louis H. Gueret	08048.0027-00	8280

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT PAPER NUMBER

3732

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/084,939	<b>Applicant(s)</b> GUERET, JEAN-LOUIS H.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 13 January 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-297 is/are pending in the application.  
     4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims withdrawn from consideration are 2,5,8-14,20,32,38-44,50,62,63,68-74,80,92,97-103,109,121,127-133,139,151,157-163,169,181,187-193,199,211,217-223,229,240-263,265-292 and 294-297.

Continuation of Disposition of Claims: Claims rejected are 1,3,4,6,7,15-19,21-31,33-37,45-49,51-61,64-67,75-79,81-91,93-96,104-108,110-120,122-126,134-138,140-150,152-156,164-168,170-180,182-186,194-198,200-210,212-216,224-228,230-239,264 and 293.

### **DETAILED ACTION**

Applicant's request for reconsideration filed 1/13/06 has been entered and carefully considered. Arguments regarding to the 35 U.S.C 102 (e) and 103 (a) have not been found to be persuasive, therefore, claims 1, 3, 4, 6, 7, 15-19, 21-31, 33-37, 45-49, 51-61, 64-67, 75-79, 81-91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-150, 152-156, 164-168, 170-180, 182-186, 194-198, 200-210, 212-216, 224-228, 230-239, 264 and 293 are rejected under the same ground rejections as set forth in the office action mailed 9/13/2005.

#### ***Claim Objections***

Claim 21 duplicates claim 15; claim 150 duplicates claim 120.

Applicant has argued in a general statement that these claims are not duplicate, however, they are held to be duplicate and Applicant is required to point out the different scope of these claims.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 15-19, 21-24, 26-31, 45-49, 51-54, 56-60, 210, 233, 235-238, 264 and 293 are rejected under 35 U.S.C. 102(e) as being anticipated by Vasas (6237609).

With regard to claims 1, 15-19, 21-24, 26-31, 45-49, 51-54, 56-60, 210, 233, 235-238, 264 and 293, Vasas discloses a mascara brush (figs. 1-3) comprising a brush (10), a reservoir (14) containing a mascara product, a wiper (24) and the brush having a cap (26). The brush further comprising a core (40) curved along at least a portion of its length so that an axis of the core defining a curve in a plane of curvature, the curve having a convex side and a concave side (fig. 3), a plurality of bristles (50) connected to the core, the bristles having ends defining an envelope surface and defining a cross-section of the brush that varies over at least a portion of the length of the core in a manner that is not geometrically similar (fig. 5), wherein the cross-section of the brush at at least one position along the length of the core is substantially asymmetrical (fig. 2) in relation to a plane perpendicular to the plane of curvature, wherein the core passes through the center of the cross-section (fig. 2) of the brush at at least one location along the length of the core; wherein, in the plane of curvature, the distance from the convex side of the curve to the envelope surface varies along at least a portion of the length of the core (figs. 8 and 10 shows the curvature at 76 and at 84 with the length of the bristles on one side of the curvature being longer than the bristles on the other side of the curvature). The core having a twisted wire core (fig. 3) having one a left-hand pitch

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and a right-hand pitch, the brush also having a stem (30) connected to the core and having an axis, the stem being located at one end of the core, the core having a left-hand pitch and being curved in a manner so as to decrease inclination of helical sheets formed by ends of the bristles relative to the axis of the stem in a direction facing away from the stem (fig. 5); the core being located off-center (fig. 7) in the cross-section of the brush over at least a portion of the length of the brush and wherein the bristles having different lengths (fig. 3) and wherein the bristles having longer bristles with ends defining an envelope surface and shorter bristles contained within a volume defining the envelope surface. In regard to the method claims, Vasas discloses the claimed method steps.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25, 55, 234 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasas.

With regard to claims 25, 55 and 234, Vasas discloses a brush comprising all the claimed limitations in claims 1, 31 and 210 as discussed above except for the product

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being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claims 1, 3-4, 6-7, 31, 33-37, 61, 64-67, 75-79, 81-89, 91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-149, 150, 152-156, 164-168, 170-173, 175-179, 210, 212-216, 224-228, 230-233, 235-239 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (5853011) in view of Vasas.

With regard to claims 1, 3-4, 6-7, 31, 33-37, 61, 64-67, 75-79, 81-89, 91, 93-96, 104-108, 110-120, 122-126, 134-138, 140-149, 150, 152-156, 164-168, 170-173, 175-179, 210, 212-216, 224-228, 230-233, 235-239, Gueret discloses a mascara brush (figs. 1-9) comprising a brush (201), a reservoir (220) containing a mascara product, a wiper (221) and the brush having a cap (223). The brush further comprising a core (2), a plurality of bristles (4) connected to the core, wherein when the core is straightened, ends of bristles defines at least one notch (7) having a maximum width located between ends of the notch spaced apart from one another along the length of the brush; the notch is concave and partially cylindrical about an axis perpendicular to an axis of the core; the brush also having a stem (222) with an end portion connected to the core and the end portion of the stem defining an axis. Gueret does not disclose the core being curved as claimed, however, Vasas as discussed above disclosed the invention essentially as claimed. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the curve core as taught by Vasas for maximizing application and combing functions and matching the curve of an eyelid.

Claims 85, 114, 144, 174 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Vasas.

With regard to claims 85, 114, 144, 174, Gueret in view Vasas disclose a brush comprising all the claimed limitations in claims 61, 91, 120, 150 as discussed above except for the product being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claims 180, 182-186, 195-198, 200-203, 205-209 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford (5137038).

With regard to claims 180, 182-186, 195-198, 200-203, 205-209, Gueret discloses the invention essentially as claimed except for the brush having a free end being not aligned with the axis of the end portion of the stem. Kingsford discloses a mascara brush (fig. 2) comprising a brush (3) with a free end portion, a stem (2) with an end portion defining an axis and the free end of the brush being not aligned with the axis of the end portion of the stem (fig. 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular brush as taught by Kingsford into the brush of Gueret for the purpose of maximizing application and combing functions.



Claim 204 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford.

With regard to claim 204, Gueret in view of Kingsford disclose a brush comprising all the claimed limitations in claim 180 as discussed above except for the product being a hair product. It would have been an obvious matter of design choice to employ the hair product since such a modification would involve a routine skill in the art.

Claim 194 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret in view of Kingsford as applied to claim 180 above, and further in view of Vasas.

With regard to claim 194, Gueret in view of Kingsford disclose the invention essentially as claimed except for the core being located off-center in the cross-section of the brush over at least a portion of the length of the brush. Vasas as discussed above disclosed the invention essentially as claimed. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular core as taught by Vasas for purpose of maximizing application and combing functions and matching the curve of an eyelid.

Applicant has argued that Vasas does not disclose "the core pass through the center of the cross-section of the brush at at least one location along the length of the core. This is not correct because Vasas shows the core passes through the center of the cross-section of the very distal end of brush (12), see fig. 3, also, the core being centered horizontally and vertically at the very distal end and it is noted that Applicant

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has not claimed the shape of the brush with a circular cross-section, therefore, it meets the claimed limitations.

Applicant has also argued that Vasas does not disclose in the plane of curvature, the distance from the convex side of the curve to the envelope surface varies along at least a portion of the length of the core, however, as discussed above figs. 8 and 10 shows the curvature at 76 and at 84 with the length of the bristles on one side of the curvature being longer than the bristles on the other side of the curvature, therefore, it meets the claimed limitations.

Applicant has further argued that Vasas does not show the cross-section of the brush has a varying width dimension, the width dimension passing through the core and being perpendicular to the plane of curvature. Figure 5 shows the brush with varying width dimension at 54 and at 56 (col. 2, lines 40-42).

In response to Applicant's argument that Gueret reference is not obvious to combine with Vasas reference, it has been held that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. In re Bozek, 163 USPQ 545 (CCPA 1969). In this case, the motivation to combine Vasas curved core into the brush of Gueret is to improve curling and building mascara as well as providing heavier coating mascara (col. 2, lines 30-44).

With regard to the argument of the combination of Gueret and Kingsford, it has been held that the test for obviousness is not whether the features of one reference may

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be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. In re Bozek, 163 USPQ 545 (CCPA 1969). In this case, Kingsford provides a curve brush to solve mascara application problems such as the difference between upper and lower lashes.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

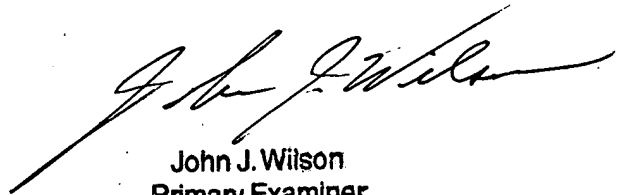
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner